

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

THARON B. HILL,) No. C 06-3080 MMC (PR)
Petitioner,)
v.) **ORDER TO SHOW CAUSE**
CALIFORNIA BOARD OF PRISON)
HEARINGS,)
Respondent.)

On May 8, 2006, petitioner, a California prisoner incarcerated at the Correctional Training Facility, Soledad, and proceeding pro se, filed the above-titled petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He has paid the filing fee.

BACKGROUND

Petitioner was convicted, in Butte County Superior Court, of conspiracy to commit murder; he was sentenced to a term of 15 years to life in state prison. In 2005, the California Board of Prison Hearings (“BPH”), for the second time, denied petitioner parole. Petitioner challenged this decision by habeas petitions filed in the Butte County Superior Court, the California Court of Appeal and the Supreme Court of California, raising in each instance the same claims raised herein. All three habeas petitions were denied.

DISCUSSION

A. Standard of Review

This Court may entertain a petition for a writ of habeas corpus "in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody

1 in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a);
2 Rose v. Hodges, 423 U.S. 19, 21 (1975). A district court shall "award the writ or issue an
3 order directing the respondent to show cause why the writ should not be granted, unless it
4 appears from the application that the applicant or person detained is not entitled thereto."
5 28 U.S.C. § 2243. Summary dismissal is appropriate only where the allegations in the
6 petition are vague or conclusory, palpably incredible, or patently frivolous or false. See
7 Hendricks v. Vasquez, 908 F.2d 490, 491 (9th Cir. 1990) (quoting Blackledge v. Allison,
8 431 U.S. 63, 75-76 (1977)).

B. Legal Claims

Petitioner claims: (1) the BPH's decision was not supported by any evidence, thus violating petitioner's constitutionally protected liberty interest in parole; and (2) the BPH failed to follow its own regulations requiring the decision be based upon at least a preponderance of the evidence, in violation of petitioner's right to due process. Liberally construed, petitioner's claims are cognizable.

CONCLUSION

In light of the foregoing, the Court orders as follows:

17 1. The Clerk of the Court shall serve by certified mail a copy of this order and the
18 petition, along with all attachments thereto, upon respondent and respondent's attorney, the
19 Attorney General for the State of California. The Clerk shall also serve a copy of this order
20 on petitioner.

21 2. Respondent shall file with the Court and serve on petitioner, within 60 days of
22 the date this order is filed, an answer conforming in all respects to Rule 5 of the Rules
23 Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be
24 granted based on petitioner's cognizable claims. Respondent shall file with the answer and
25 serve on petitioner a copy of all portions of the state trial record that have been transcribed
26 previously and that are relevant to a determination of the issues presented by the petition.

If petitioner wishes to respond to the answer, he shall do so by filing a traverse with the Court and serving it on respondent within 30 days of the date the answer is filed.

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1 3. In lieu of an answer, respondent may file, within 60 days of the date this order
2 is filed, a motion to dismiss on procedural grounds, as set forth in the Advisory Committee
3 Notes to Rule 4 of the Rules Governing Section 2254 Cases. If respondent files such a
4 motion, petitioner shall file with the Court and serve on respondent an opposition or
5 statement of non-opposition within 30 days of the date the motion is filed, and respondent
6 shall file with the Court and serve on petitioner a reply within 15 days of the date any
7 opposition is filed.

8 4. Petitioner is reminded that all communications with the Court must be served
9 on respondent by mailing a true copy of the document to respondent's counsel.

10 5. It is petitioner's responsibility to prosecute this case. Petitioner must keep the
11 Court and respondent informed of any change of address and must comply with the Court's
12 orders in a timely fashion. Failure to do so may result in the dismissal of this action for
13 failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

14 6. Upon a showing of good cause, requests for a reasonable extension of time will
15 be granted as long as they are filed on or before the deadline which they seek to extend.

16 IT IS SO ORDERED.

17 DATED: June 26, 2006


MAXINE M. CHESNEY
United States District Judge

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